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ADMIRALTY.

1. In cases of collision, where both vessels are to blame, the whole damages are to be equally divided between them, but the court may order the vessel most to blame to pay all the costs. Rogers *v.* Brig Rival, 28.

2. The owner of the cargo cannot be held to contribute, in general average, towards the expenses of repairs of the vessel, when the cargo is in safety, and receives no benefit therefrom. Sparks *v.* Kittredge, 318.

3. *Semble;* — When no other vessel can be procured to take the cargo, and it would perish, or be of no value if left, if the expenses of repairs exceed the benefit to the ship-owner therefrom, such excess should be paid by the cargo, if incurred for its benefit. But whether such payment should be made by general average, *quære*, *ib.*

4. A seaman stands in relation to the master of a vessel like a child to a parent, or an apprentice to a master, or a scholar to a teacher, so far as regards obedient and respectful deportment, and is punishable corporally for a deportment or language not obedient or respectful. Fuller *v.* Colby, 397.

5. The punishment, however, must be not excessive, considering the nature of the offence; and a single blow with the hand, producing no wound, is not so, *ib.*

6. A seaman, on receiving such a blow for such an offence, is not justified in drawing and brandishing a knife or an axe; nor is he justified in using them to prevent his arrest, whether for the original offence, or the use of the knife, *ib.*

7. The master is authorized to order the mate to assist him to make such an arrest; and the mate and the master may seize deadly weapons in order to resist those of that character in the hands of the seaman, and to put down mutinous and insubordinate conduct in him and the rest of the crew, dangerous to the officers and the safety of the vessel, and to restore order and obedience on board; and, if necessary, may use them for this last purpose. A seaman has no right to refuse to lay down such deadly weapons, till the officers do theirs first, and is not protected from further violence in such case by law, if retreating to the prow of the vessel, or by any other course than obedience, *ib.*

8. But if then punished improperly, or too severely for a past offence, he has full redress on his return; or if attacked, without provocation or disobedience on his part, he can defend himself; and under all excessive blows and punishment for disrespect or disobedience, he can justify as a child or apprentice or scholar resisting the excess, *ib.*

9. In the present improved condition of seamen, it is best not to punish corporally any except minors for slight offences, and unless in case of mutiny and imminent peril, it is better to delay all punishment till the parties have full time to become cool, and apologize, *ib.*

10. Where a vessel was under fifty tons burthen, and not engaged in the foreign trade, or in the coasting trade out of the state, but with a license was employed in carrying and laying stone during summer in Quincy River and Massachusetts Bay, it is doubtful whether her employment was of that maritime character which would render the vessel liable for wages. Packard *v.* Sloop Louisa, 441.

11. If a person is hired on board of her by the master, who has chartered the vessel of all the owners at a fixed proportion of the profits, and this fact is known to the person, if he signs no shipping-articles, and resorts to the master only for payment two or three years after the service is finished, and is paid in part by him, — it is strong evidence that the contract was originally with the master alone, and not intended to bind the owners as such, or the vessel, *ib.*

12. This presumption is strengthened if the person was thus hired and employed to load and unload, and lay the stone, as well as to navigate the vessel, instead of signing shipping-articles, and being employed exclusively in marine duties. And the usage of a port, in such a case, has some influence, *ib.*

13. A delay to institute proceedings against the vessel for wages for three years after they became due from the master, under the above circumstances and contract, and when

in the mean time some of the owners had changed and become insolvent, exonerates her from the lien for wages, *ib.*

14. There is no fixed time for liens to expire, which exist at common law, except the time of parting with the possession, and none in maritime liens, where possession does not exist with them exclusively, except the end of the next voyage, or the intervention, after it, of rights by third persons without notice, *ib.*

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2. There is no inhibition, in the bankrupt act of 1841, or in the relation which the state and federal governments bear to each other, or in the grants or restraints of power conferred upon them respectively, which deny to the state courts the right to entertain an inquiry into the validity of a discharge and certificate upon an allegation duly interposed, that the bankrupt did not render a full and complete inventory of his "property, rights of property, and rights and credits," but fraudulently concealed the same. Mabry *v.* Herndon, 254.

3. *Quære?* May not the discharge and certificate of a bankrupt be impeached for fraud by one not a party to the proceedings in bankruptcy, according to the principles of the common law, without reference to the provisions of the act, and in such case is it not sufficient for the pleadings to state in what the fraud consists, without giving the formal notice which the act seems to contemplate, *ib.*

4. *Semble;* A plea which merely alleges that the debt sought to be recovered is of a *fiduciary character*, is bad; because it states a legal conclusion, instead of disclosing the facts, that the court may determine whether the debt is founded upon a trust, such as is excepted from the operation of the bankrupt act, *ib.*

5. It is not an available objection on error, that notice of an intention to impeach a bankrupt's discharge and certificate, was not given until after the commencement of the term of the court when the cause was triable; the act of congress does not prescribe the time when the notice must be given, and if too short to allow the necessary preparation to be made for trial, a continuance should be asked, *ib.*

6. Where a defendant in execution sets up his discharge and certificate as a bankrupt, by a petition, upon which a *supersedeas* is awarded, it is competent for the plaintiff to impeach the same for any of the causes provided by the act of congress of 1841, and make up an issue to try the facts, *ib.*

7. A bankrupt, in a suit commenced by himself, and prosecuted by his assignee, is not a competent witness for the plaintiff, after his discharge. Hammond *v.* Wheelock, 310.

8. Where a cause of action arises under certain rights acquired by a statute of the

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1. In a suit in equity brought by the vendor of land to set aside the conveyance for fraud, a mortgagee of the vendee was brought in to defend, but it was shown that the mortgage was discharged before the bill was filed, and there was no evidence of any collusion. It was held, that the mortgagee was a competent witness for the respondent; but that he would not have been, if he had remained interested, Warner *v.* Daniels, 160.

2. A witness is not rendered incompetent by having received a copy of the interrogatories before the time of testifying, without any comments or any influence used to affect his answers, *ib.*

3. A witness is not rendered incompetent by having received a letter from one of the parties, requesting him to tell the whole truth, without any suggestion as to what the writer considered the truth to be, *ib.*

4. A mistake as to the value of the consideration given for the conveyance of land, is not a sufficient ground for setting aside the conveyance, where the vendor had means of avoiding the mistake by inquiry, and no fraud or falsehood was used to influence his judgment, *ib.*

5. But if a vendor of land is clearly shown to have been overreached in a material degree, by impositions, concealments, or misrepresentations, made by the vendee, on which he properly relied, he will be relieved in equity, *ib.*

6. And to sustain such a charge, the whole circumstances of the case, and the character and relations of the parties, are proper subjects of consideration, *ib.*

7. Courts of equity can go more on what is called presumptive evidence, than courts of law, *ib.*

8. Where the bill charges that a company, represented by the respondents to have been duly organized, was never duly organized, the record of the organization is the best and suitable evidence of the fact, and not the oath of one of its officers, *ib.*

9. Where the vendee of the land made representations respecting the value of the consideration, which were false in material points, and which influenced the vendor to sell, whether the vendee knew them to be false or not, it was held that they would vitiate the sale, *ib.*

10. So also if they were made by another

person in the presence of the vendee, and he was benefited by them, *ib.*

11. *Suppressio veri*, is as fatal as *suggestio falsi*, *ib.*

12. Conversations of the respondent with other persons, on a subject of a kindred character, near the time of the transaction, and illustrating his intention, are competent evidence for the complainant, *ib.*

13. An entire failure of consideration in the receipt of what is mere moonshine, is often sufficient to rescind a contract; although mere inadequacy of consideration is not sufficient, *ib.*

14. Where the aid of a court of chancery is indispensable to obtain the discovery of the important facts in the case, an application for relief can be sustained in connection with that discovery, in the circuit courts of the United States, notwithstanding the 16th section of the judiciary act prohibits such relief when it can be obtained at law, *ib.*

15. Length of time, short of the statute of limitations, is sometimes a bar; but not if fraud exists, or if the delay is accounted for, or if such a course would work injustice, *ib.*

16. If either party cannot restore the property in good condition, damages may be given; and if the inability to restore happens by the course of the complainant, it should not prevent his obtaining relief in some manner, if he was not then aware of the fraud, *ib.*

17. D. purchased a farm of W., paying him therefor in shares of the stock of the Cleft Ledge Granite Company, which he represented to be worth $6000. Several representations were made to W. by D. and also by F., who was concerned in the same company, to induce W. to take the stock in payment, which representations proved to be false, and the stock worthless. On a bill in equity by W for relief, it was decreed, that the sale should be rescinded, the shares reconveyed by W. to D., and the farm by D. to W., and a master appointed to report the amount of rents and waste, after deducting permanent improvements, which should be allowed to W. by D. *ib.*

18. But if neither the land nor the shares could be reconveyed, the master must examine and report the damage done to W. by the misrepresentations of D. and F., and a decree be entered against them for the amount. And if the land could be reconveyed, and not the shares, the land must be reconveyed, and the value, if anything, of the shares, at the time of the sale, deducted from the net income, and a decree made for the balance, *ib.*

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2. An enlistment into a volunteer company in the service of the United States, is a contract with the government, and is not binding upon the infant, unless shown clearly to be beneficial to him. Commonwealth *v.* Archer, 465.
3. The members of such a volunteer company, although officered and organized by the state authorities, are to be regarded as United States troops, and not as militia in the service of the United States. *Ib.*
4. In this case, a minor enlisted in a volunteer company, joined with his father in a petition for a *habeas corpus* for his release; and the court ordered him to be discharged. *Ib.*
5. The volunteers, raised under the act of congress, of May, 1846, providing for the raising of military forces for the Mexican war, are not militia, nor a part of the regular army, but a distinct species of the military force of the United States, partaking somewhat of the character of both. *In re* Kimball, 500.
6. The raising of such a volunteer force, by congress, is constitutional. *Ib.*
7. The enlistment in such volunteer force is in the nature of a contract; and the obligation of the volunteers to serve, depends upon that contract. *Ib.*
8. The enlistment of minors in such volunteer companies, without the consent of their parents, masters or guardians, is invalid. *Ib.*
9. Whether the appointment of the officers, in a company composing a part of such volunteer force, by the governor of the state in which the company is raised, is constitutional or legal,—*quære?* But the volunteers are estopped taking advantage of the objection on *habeas corpus*. *Ib.*
10. *It seems*, that under the act of 1846, it is optional with the government, to make the election, in the outset, that the volunteers shall serve during the war; and if the volunteers enlist with notice of such election, they are bound by their assent. *Ib.*
11. A minor, who enlisted in one of the volunteer companies, raised under the act of congress of May, 1846, providing for the raising of military forces for the Mexican war, but which company has not yet been mustered into the service of the United States, or received or accepted by any officer thereof, and has not received any rations or clothing therefrom, cannot be held in custody as a volunteer, under the law of the United States. Bamfield *v.* Abbott, 510.
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1. If a party be legally and properly discharged, as to any contract in the state where the insolvent system exists, the discharge must be held good in other states, and in the courts of the United States, Towne *v.* Smith, 12.
2. But if the contract is made, or is to be performed abroad, such discharge is not a bar to the action, *ib.*
3. It *seems*, that a negotiable note, not restricted on its face to be paid within the state, may be considered as payable, wherever the indorsee may live; and if the indorsee live out of the state, it is not barred by a subsequent discharge in the state where the contract was made, *ib.*
4. In such a case, the discharge will not avail in a court of the United States, unless the contract sued has been conclusively assigned to a person living in another state, or the interest in it still remains in a citizen of the state in which it was made, *ib.*
5. Whether the actual seizure of the property of an insolvent, under process issuing from a court of the United States, before his assignees under the state insolvent law take possession of it, creates a lien which will, in all cases, be sustained — *quære? ib.*
6. Whether, where an insolvent, living in Massachusetts, gives to a creditor, also living in Massachusetts, in payment of a previous debt, a note payable to his own order and by himself indorsed, and the creditor sells the note in New York to a third person, living in New York, the note is to be considered a contract, as between the debtor and such third person, made or to be performed in New York — *quære? ib.*
7. H. & H. debtors, living in Massachusetts, gave to W. A. H. & Co. also living in Massachusetts, in payment of a previous debt, a note, payable to the order of H. & H. and by them indorsed. W. A. H. & Co. carried the note to New York, and sold it there, for a good consideration, to S. living in New York. S. commenced a suit against H. & H. in the United States circuit court for the district of Massachusetts, and attached the property of H. & H. thereon. H. & H. became insolvent under the law of Massachusetts, T. & T. were duly appointed their assignees, and H. & H. were discharged from their debts under such law. T. & T. then brought a bill in equity in the circuit court, praying that S. might be enjoined from proceeding further in his suit against H. & H. in that court. The court, upon these facts, ordered that the bill be dismissed, on precedents in the supreme court of the United States, but doubting the correctness of their principles, *ib.*
8. A debt, due from one citizen of Massachusetts to another, contracted while the bankrupt law of the United States was in operation, and while the insolvent law of Massachusetts was suspended, may be discharged under proceedings commenced under the insolvent law, after the repeal of the bankrupt law, and the revival of the insolvent law. Whiting *v.* Lewis, 181.
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1. A. mortgaged to B. his stock in trade, to secure a bona fide debt, describing it in these words: "the whole stock in trade of said A., as well as each and every article of merchandise which said A. this day bought of W., as every other article constituting the said A.'s stock in trade, in the shape the same is and may become, in the usual course of the said A.'s trade and business as a trader." It was *held*, that nothing passed by the mortgage, except the stock in trade which the mortgagor had, at the time the mortgage was executed, Jones *v.* Richardson, 344.

2. Such mortgage will not be held to be fraudulent, but will be held valid as to those goods which the mortgagor had at the time the mortgage was executed, in the absence of any proof of fraud, *ib.*

3. Whether, where a party agrees to pledge property afterwards to be acquired, and when acquired delivers over the same to the pledgee, the right of the pledgee will then attach,—*quære*. But if so, the same doctrine does not apply to a mortgage or sale, *ib.*

4. Whether, if the mortgagor had done any act, in relation to the subsequently acquired goods, by which he ratified the mortgage, he would have thus given the mortgagee a lien thereon, as against the mortgagor,—*quære*, *ib.*

5. But, under the revised statute of Massachusetts, ch. 74. s. 5, a delivery of such subsequently acquired property by the mortgagor to the mortgagee, could not render the mortgage valid, as against subsequently attaching creditors, unless delivered with the intention to ratify the mortgage, and unless the mortgagee had retained open possession of the same until the time of such attachment. And whether such delivery and possession would be sufficient to render it valid,—*quære*, *ib.*

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1. The section of the statute of Ohio entitled "an act to prevent kidnapping," which forbids any person from attempting or assisting to carry any black or mulatto person out of the state, without proving his right before some judge or justice of the peace in the county, is absolutely null and void, under the decision of the supreme court of the United States, in the case of Commonwealth of Pennsylvania *v.* Prigg; Richardson *v.* Beebe, 316.
2. An arrest and detention, under a mittimus charging the person arrested with kidnapping, under said section, and not proving property before removal, but not averring that the person carried away was a freeman, are illegal, *ib.*
3. Every mittimus must substantially show that the accused is charged with some definite offence, or it cannot be sustained, *ib.*
4. Where A., a slave from Georgia, when in Massachusetts with her master, states, in casual conversation with B., a colored man, that she is a slave, and would like to be free, but is afraid or unwilling to take her freedom, and B. repeats the conversation to C., and C. calls at her master's house to see her, and is by her master refused permission, these facts are not sufficient to justify C. in applying for a writ of habeas corpus for the purpose of setting A. at liberty, and she may recover damages of C. for any injury that resulted to her in consequence of his acts. Linda *v.* Hudson, 353.
5. The right to reclaim a fugitive slave must not be exercised except by due process of law, and never with force and arms. In re Kirk, 355.
6. A master of a vessel, on board of which a slave escapes from Georgia to New York, will not be considered, in the courts of New York, as the agent of the owner of the slave, and thus authorized to detain and carry back such slave to Georgia, in the absence of any express authority, notwithstanding any implication of such authority from the laws of Georgia, *ib.*
7. The laws of Georgia, which provide that any person may apprehend a fugitive slave, and return him to his master, cannot operate beyond the territory of Georgia, *ib.*
8. Where a master of a vessel returns, upon a writ of habeas corpus, that the person detained in custody by him is a slave, who has concealed himself on board the vessel, and is there confined, without averring that he holds him for the purpose of bringing him before the mayor, pursuant to the Revised Statutes of New York, ch. 659, § 151, the court will not presume that he held the slave for the purpose of so bringing him before the mayor, *ib.*
9. In a case involving personal liberty, where the fact is left in such obscurity that it can be helped out only by intendment, that intendment shall be in favor of the prisoner, *ib.*
10. The provision in the Revised Statutes of New York, giving authority to the mayor or recorder of the city of New York, in the case of a slave who secretes himself on board a vessel, and is brought into the state in such vessel, to inquire into the circumstances, and give a certificate which shall be a sufficient warrant to the captain to carry or send such slave to the port or place from which he was brought, is unconstitutional and void. In re Kirk, 361.
11. The legislation of congress upon the subject of fugitive slaves must supersede all state legislation upon the same subject, and, by necessary implication, prohibit it; but cannot interfere with the police power belonging to the states, by virtue of their general sovereignty. The provision of the Revised Statutes in question does not come within that police power, *ib.*
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